mance, enforceability or discharge. The Guarantee made on July 31, 1974, is expressed to be "a continuing guarantee"; it is not a succession of separate guarantees. But the learned Judge failed to appreciate that the advances to Ta Leong were made only after November 15, 1974 and the effect the section would have in such a case.

The learned trial Judge also held that there is no reason or justification for giving the section retrospective effect. To do so would have invalidated overnight a large number of guarantees held by banks and others, in good faith as security, in Singapore and would involve a large number of perfectly respectable guarantors in the commission of criminal offences, a result which it is inconceivable the legislature could have intended without express terms. But the question of giving the section retrospective effect does not arise.

In our view, the key words of the section are "it shall not be lawful for a Company". These words are in themselves precise and unambiguous. No one can doubt what the words mean. In the *Sussex Peerage Case*(1) the Judges of the House of Lords expressed the view that Acts of Parliament were to be construed "according to the intent of the Parliament which passed the Act". Tindal C.J., delivering the opinion of the Judges said (at p.1057):

"If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves alone do, in such case, best declare the intention of the lawgiver."

The mischief which the legislature clearly intended to prevent by section 133A is fraud on the minority shareholders. It is conceded, by the Defendants, and in our view properly conceded, that the section could not have retrospective effect. But no monies were advanced by the Plaintiffs to Ta Leong until October/November, 1975, well after section 133A had come into force. These transactions are therefore caught by the section and the effect of the section on the Guarantee is to discharge it by frustration as the further performance of it has become illegal.

For these reasons we allowed the appeal with costs against the Plaintiffs.

Appeal allowed

Solicitors: *Chung & Co.; Y.M. Jumabhoy & Co.*

S.N. ASWANI v. COLLECTOR OF LAND REVENUE

[C.A. (Wee Chong Jin C.J., Lai Kew Chai & Chua JJ.)
May 28, 1982]
[Singapore – Civil Appeal No. 35 of 1981]

Land Acquisition – Controlled premises – Recent purchase of premises for $750,000 – Appeals Board compensation for acquisition in the sum of $447,980 – Appeal against said valuation – Control of Rent Act (Cap. 266) – Land Acquisition Act (Cap. 272), ss. 3, 5, 15 & 33.

Land Acquisition – Controlled premises – Recent sale – Valuation – Method of assessment.

The premises in question was No. 92 of High Street which was also rent-controlled. One Hazoor, a tenant of the ground floor of the said premises, purchased it from the owners for $400,000 in November 1973. The upper floors of the said premises were occupied by other tenants. Subsequently the premises of No. 92 High Street with vacant possession of the ground floor was offered for sale to the appellant who exercised the option in November 1973.

In August 1973 another property at No. 86 High Street was sold to its tenant at $500,000.

On July 15, 1977, pursuant to the provisions of the Land Acquisition Act, the Collector made an award of $123,600 to the appellants for No. 92 High Street. The appellant appealed to the Appeals Board. He was awarded $447,980 by the Board. The Board considered that the appellant had paid a "special price" for the land and because the undisputed evidence before it was that "there are occasions where sitting tenants would pay as much as and sometimes, more for a property than an outsider will pay to get possession." He appealed.

Held, allowing the appeal: (1) the compensation to be awarded for land acquired under the Land Acquisition Act (Cap. 272) must be determined by reference to the price which a willing vendor might reasonably expect to obtain from a willing purchaser and that what is meant in general by the expression "market value" in the said Act is that its value in general can be measured by a consideration of the prices that have been obtained for land of similar quality and in similar positions;

(2) there was no evidence to justify the Board's finding that the appellant had paid a "special price" when he purchased the property in November 1973. The price the appellant paid was, clearly on the evidence, a price which the vendor could reasonably expect to obtain from any willing purchaser and which the appellant as a willing purchaser, would reasonably expect to have to pay to the owner as a willing vendor;

(3) the market value of rent-controlled property which is tenanted is appreciably lower than its market value if it is not tenanted. The reason is because the owner cannot reasonably expect to obtain the price for his property if he sells it without vacant possession that he would obtain if he sells it with vacant possession;

(4) the award of the Board would therefore be quashed and substituted by an award of $750,000.

COURT OF APPEAL.

L.A.J. Smith for the appellant.

M. Karthigesu for the respondent.

Cur. Adv. Vult.

Wee Chong Jin, C.J. (delivering the judgment of the Court): In July 1973, Mr. Hazoor Singh Kalra entered into a contract to purchase No. 92 High Street. The purchase price was $400,000.00. He was then the tenant of the ground floor of the premises, which are rent-controlled premises. The upper floors were occupied by other tenants. The sale was completed in November 1973. Soon after completion the new owner of No. 92 High Street was minded to sell and granted an option to a land broker to purchase the property at the price of $750,000.00 with vacant possession of the ground floor.

The broker approached Mr. Sugnomal Nathumal Aswani, the appellant in this appeal and told him that No. 92 High Street was for sale with vacant possession of the ground floor for $750,000.00 and that he had an option to purchase from the owner. Mr. Aswani was in the wholesale textile business and had carried on his business under the firm's name of N. Sugnomal at No. 76A High Street since 1955. Mr. Aswani was interested as for some years he had been looking for a shop in upper High Street which is the centre for big scale wholesale textile business in Singapore. He decided to purchase No. 92 High Street. Accordingly, he exercised the option in November 1973.

For the purpose of obtaining a loan from a bank, No. 92 High Street was valued by C.H. Williams & Co. (Pte.),

a reputable firm of Valuers and Estate Agents who valued the property as at January 1974 at $765,000.00 subject to vacant possession being obtained for the ground floor and the top floor. Before the completion of the sale of the property to the appellant, which took place in March 1974, he was approached by a broker to sell his option for $50,000.00. He declined to accept the offer.

In August 1973 another property in upper High Street, No. 86 High Street had also been sold by its owner to Mr. B.H. Melwani the tenant of the ground floor of that premises. The purchase price was $500,000.00.

Pursuant to the provisions of section 5 of the Land Acquisition Act, by a declaration dated November 9, 1974 published in the Government Gazette notice was given of the intended acquisition of No. 92 High Street for the purpose of Urban Redevelopment. After the giving of the notification and the procedure laid down in Sections 6 and 8 of the Act having been followed, the Collector took the steps prescribed by the Act to determine the compensation that ought to be allowed to Mr. Aswani for his property, No. 92 High Street. It is provided by section 15 of the Act that in so doing the Collector shall be guided by the provisions of section 33 of the Act. For the present purpose the material provisions of section 33 are as follows:–

"33. - (1) In determining the amount of compensation to be awarded for land acquired under this Act, the Board shall, subject to the provisions of subsections (2), (3) and (4) of this section, take into consideration the following matters and no others, namely –

(a) the market value as at the 30th day of November 1973, or the market value as at the date of the publication of the notification under subsection (1) of section 3 of this Act if the notification is within six months from the date thereof followed by a declaration under section 5 of this Act in respect of the same land or part thereof, or the market value as at the date of the publication of the declaration made under section 5 of this Act, whichever is the lowest;"

At the enquiry conducted by the Collector on May 12, 1977 Mr. Aswani's solicitor submitted a claim on his behalf of $883,793.00. On July 15, 1977 the Collector made an "award of a total sum of $123,600 or reflecting approximately $772.02 p.s.m. or $71 p.s.f. (subject to tenancies) as compensation."

On appeal to the Appeals Board, the Commissioner of Appeals, sitting alone, after hearing evidence and submissions gave his decision as follows:–

"I will give my reasons in writing if necessary should this appeal go further. Very briefly, the issue is one of valuation. The subject matter is No. 92 High Street, which is situated – there is no dispute on this, it is common ground – in that part of High Street known as Upper High Street, known both locally and internationally as a wholesale area, wholesale merchants carrying on business in the textile trade.

The appellant is in the wholesale business of textiles. He bought the property on an option given to him on November 3, 1973 and the property was transferred to him on March 15, 1974 at a price of $750,000. It was sold to him by the sitting tenant of the ground floor who had also bought it in November 1973 for $400,000 from the owner. There is one other property in the neighbourhood that had changed hands around this period, No. 86 High Street, bought by Mr. Melwani in August 1973 for $500,000. Mr. Melwani was the sitting tenant of the ground floor.

So far as valuation is concerned, the appellant, called Mr. Chua whose evidence has been dealt with in the written submissions that are before me and I can be brief. There are two ways he approached it. One was to take the purchase price of No. 92, divide it by the land area and arrive at the per sq. ft. value. That is simply a mathematical exercise, one doesn't need a valuer to do that. The other one he did as a valuer was to measure the property, the actual built-up area; he then assigned what in his judgment was a proper value for the floors other than the ground floor of $50 per sq ft; he then attributed the balance of the purchase price as value of the ground floor, and worked out the per sq. ft. value of the ground floor. I reject this method of computation as being an arbitrary one.

For the respondent the Collector, his valuer rejects the transaction of 86 High Street and the two transactions of No. 92 High Street. He looked for and found transactions in Lower High Street, which so far as locality is concerned, I say is very different from Upper High Street. He accepted what transactions there were and made adjustments to them by way or percentages. It is a very difficult exercise to do, and in the circumstances, the approach must be viewed with great caution.

Having heard the evidence, I accept the transactions of 86 and 92 High Street, one at $500,000 and the other at $400,000. The issue boils down to, as submitted by Mr. Smith for the appellant, what is a fair sum for the appellant to pay to get vacant possession of the ground floor. He paid $350,000. The question is, is $750,000 the market value for the subject matter of the appeal, for 92 High Street? This is a difficult question because we don't have any comparables to work on vacant possession. Some guide – is to be had from the earlier sales from 8 years to 4 years before 1973, summarised in Mr Karthigesu's written submission. Then as I said, in 1973 were the transactions, purchases by sitting tenants.

Having exercised my best judgment in this matter I accept the submission for the respondent that the appellant who was in great need (it was essential for him to have a place on the ground floor in Upper High Street) who had been looking for a ground floor premises, since I think, from about 1968, and had instructed brokers and finally was offered in 1973 92 High Street, was prepared to pay and had paid a special price for the premises. That is one aspect of the matter. The other aspect of it is the evidence I have heard, which is not in dispute, that there are occasions where sitting tenants would pay as much as and sometimes more for a property than an outsider will pay to get possession. There being that kind of evidence, and having regard to the fact that the appellant had paid a special price, I order that the award be calculated at $260 per sq ft. What I have done is to take the two transactions, 86 High Street at $500,000 and 92 High Street at $400,000, which I reduce to a sq. ft. basis and average to get $261 per sq. ft. I have rounded it to $260. I cannot accede to the submission for the respondent that 25% should be taken out for special needs.

So that would be the order of the Board."

Mr. Aswani now appeals against the award of $447,980 as determined by the Board.

The undisputed evidence before the Board is that the subject property is situated in a locality, referred to as Upper High Street, which has attained international importance in the wholesale textile trade of Singapore and therefore a locality much sought after by wholesale textile merchants as a place in which to carry on their trade. It is also common ground that No. 92 High Street is subject to the provisions of the Control of Rent Act (Cap. 266).

It is settled law that the compensation to be awarded for land acquired under the Act must be determined by reference to the price which a willing vendor might reasonably expect to obtain from a willing purchaser and that what is meant in general by the expression "market value" in the Act is that its value in general can be measured by a consideration of the prices that have been obtained for land of similar quality and in similar positions.

It follows, as a self-evident proposition, for which no authority is necessary, that where there has been a sale of the acquired land shortly before its acquisition on a willing vendor, willing purchaser basis, then its "market value"

must, primarily, be measured by the price obtained by that willing vendor. In other words, the price obtained by the willing vendor from the willing purchaser at a recent sale of land must be the best evidence of the "market value" of the identical land at the date of its acquisition.

Under section 33(1)(a) the Collector and the Board are obliged to arrive at the "market value" as at November 30, 1973, or as at the date of the publication of the notification under section 3(1) if the notification is within six months from the date thereof followed by a declaration under section 5 in respect of the same land, or as at the date of the publication of the declaration under section 5, whichever is the lowest. In all cases, therefore, of land acquired under the Act, where there has been a willing vendor, willing purchaser sale of the identical land shortly before or after November 30, 1973, the price obtained by that willing vendor would primarily be the "market value" of the land for the purpose of determining the amount of the compensation to be awarded unless there is evidence that its "market value" at the date of the section 3(1) notification or the section 5 declaration as the case may be is lower than its market value as at November 30, 1973.

In the present case No. 92 High Street was acquired pursuant to a section 5 declaration published on November 9, 1974. There is no evidence that its "market value" at that date was lower than its "market value" as at November 30, 1973. It was purchased by the appellant on a willing vendor, willing purchaser basis under an option exercised in November 1973 with completion in March 1974 at the price of $750,000.00. The Board, as appears from the oral judgment which we have earlier set out, rejected the appellant's purchase of the land as a comparable because it found that the appellant had paid a "special price" for the land and because the undisputed evidence before it was that "there are occasions where sitting tenants would pay as much as and sometimes more for a property than an outsider will pay to get possession."

We have scrutinised closely the evidence and it is plain that there was no evidence to justify these findings of the Board. Indeed, the evidence was the other way. The appellant did not pay a "special price" when he purchased the property in November 1973. The price he paid was, clearly on the evidence, a price which the vendor could reasonably expect to obtain from any willing purchaser and which the appellant, as a willing purchaser, would reasonably expect to have to pay to the owner as a willing vendor.

The expert witness, a qualified valuer, called by the appellant, when cross-examined, disagreed with the suggestion that there was not much difference between the price which a sitting tenant would be willing to pay and the price which non-sitting tenant would pay to get vacant possession. In our opinion it is a self-evident fact, for which no evidence need be called, that the market value of rent controlled property which is tenanted is appreciably lower than its market value if it is not tenanted. The reason is because the owner cannot reasonably expect to obtain the price for his property if he sells it without vacant possession that he would obtain if he sells it with vacant possession.

In these circumstances the award of the Board cannot stand and we substitute therefore an award of $750,000.00. The respondent will have to pay the costs of the appeal and of the proceedings before the Board.

Appeal allowed.

Solicitors: *L.A.J. Smith; Karthigesu & Arul*

THE "ENFIELD"; BARBURY (PANAMA) S.A. & ANOR. v. CROSSOCEANIC NAVIGATIONAL SERVICES PTE. LTD.

[C.A. (Wee Chong Jin C.J., Kulasekaram & Lai Kew Chai JJ.) May 28, 1982]
[Singapore – Civil Appeal No. 29 or 1981]

Shipping Law – Arrest of ship – Dispute as to ownership – Sale of vessel to another was a sham – High Court (Admiralty Jurisdiction) Act (Cap.6), s. 4(4) (1) (a).

On May 15, 1980 the respondents arrested M.V. "Enfield" of Panama as security for their claim of disbursement which they had incurred as owner's agents in Madras in February, March, and April 1980. The appellants sought to set aside the said writ and contended that the ownership of the vessel had been transferred to Barbury (Panama) S.A. (Barbury). The appellants therefore claimed that the requirements of s. 4(4) (1) (a) of the High Court (Admiralty Jurisdiction) Act (Cap. 6) had not been complied with. The learned Judge dismissed the appellants' application and the appellants appealed.

Held, dismissing the appeal: (1) the purported sale of the vessel by Enfield Shipping Corporation S.A. to Barbury was a device and a sham designed to defraud claimants such as the respondents so that the vessel as a security was put out of their reach;

(2) the court is entitled to look at the transactions and determine the true beneficial ownership of the vessel;

(3) the evidence amply confirmed that Barbury did not carry the true face of a corporate *bona fide* purchaser and that the Enfield Shipping Corporation S.A. (the second appellants) were at all material times the beneficial owners of the vessel.

Cases referred to:–

(1) *The Monica S* [1967] 2 Lloyd's L.R. 113, 132.
(2) *The Aventicum* [1978] 1 Lloyd's Rep. 184.
(3) *The Maritime Trader* [1981] 2 Lloyd's Rep. 153, 156-7.

HIGH COURT.

S. Selvadurai for the plaintiff.
Lo Kok Siong for the defendants.

Cur. Adv. Vult.

D'Cotta J.: The two motions before the Court by the Defendants are to set aside the writ *in rem* and all subsequent proceedings for want of jurisdiction *in rem*.

The facts are briefly as follows:–

The Plaintiffs are ship agents in Madras and were at all material times the Defendants' agents in respect of their vessel "ENFIELD" of the Port of Panama at the Port of Madras with authority from the owners to appoint sub-agents in Colombo during the months of February, March, April and part of May 1980.

The claim of the Plaintiffs is for disbursements made and/or liabilities incurred for and on account of the said vessel and/or on behalf of the Defendants, their servants or